No. 346

In the Supreme Court of the United States

OCTOBER TERM, 1946

SILESIAN AMERICAN CORPORATION, DEBTOR, AND SILESIAN HOLDING COMPANY, PETITIONERS

v.

TOM C. CLARK, ATTORNEY GENERAL, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

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OPINIONS BELOW

The opinion of the District Court (R. 49) is not reported. The opinion of the Circuit Court of Appeals (R. 63–69) is reported at 156 F. 2d 793.

JURISDICTION

The judgment of the Circuit Court of Appeals (R. 69) was entered on July 3, 1946. The petition for writ of certiorari was filed on August 2, 1946. The petition was denied on October 14, 1946 but the order denying the petition was va-

cated and the petition granted on February 17, 1943 (R. 70). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Acting pursuant to the Trading With the Enemy Act, as amended by the First War Powers Act, 1941, the Alien Property Custodian has vested certain shares of stock in an American corporation and has directed that corporation to issue to him new certificates representing the vested shares. The corporation asserts that certain Swiss banks, which participated in the proceedings before the district court but have not appealed, are in fact pledgees of the shares. The question presented is whether on this record these petitioners may dispute the Custodian's demand for immediate possession of the property.

STATUTE INVOLVED

The relevant provisions of the Trading With the Enemy Act, 40 Stat. 411, 50 U. S. C. App. 1 *et seq.*, as amended by the First War Powers Act, 1941, 55 Stat. 838, 50 U. S. C. App. (Supp. V) 5 (b) are set forth in an Appendix, *infra*, pp. 34–40.

STATEMENT

Petitioner Silesian American corporation is the debtor in proceedings for corporate reorganization brought in the district court on July 29, 1941, pursuant to Chapter X of the Bankruptcy Act,

11 U. S. C. 501 *et seq.* (R. 1, 34). Petitioner Silesian Holding Company is the holder of the majority of the outstanding shares of the debtor's common and preferred stock (R. 5).

On November 17, 1942, the Alien Property Custodian, the predecessor of the respondent,[1] issued Vesting Order No. 370, 8 F. R. 33 (R. 14–15). By that Order he vested in himself 50,000 shares (41.67%) of the preferred stock of the debtor and 98,000 shares (49%) of its common stock. The Order contains findings that the shares in question were "owned by Non Ferrum Gesellschaft zur Finanzierung von Unternehmungen des Bergbaues und der Industrie der Nichteisenmetalle, Zurich, Switzerland, and held for the benefit of Bergwerksgesellschaft Georg von Giesche's Erben, a German corporation"; that the shares are property of a "national of a designated enemy country (Germany)"; and that it is necessary in the national interest to vest them. A copy of this Order was served on the debtor (R. 16), and the debtor was directed to cancel on its books the

[1] By Executive Order No. 9788, October 14, 1946, 11 F. R. 11981, the authority, rights, privileges, and powers of the Alien Property Custodian and of the Office of Alien Property Custodian were transferred to the Attorney General. By order of this Court dated February 17, 1947, Tom C. Clark, Attorney General, as Successor to the Alien Property Custodian, was substituted as respondent for James E. Markham, as Alien Property Custodian. In this brief we shall use the term "Custodian" interchangeably to refer to the former Alien Property Custodian and to the Attorney General, as successor to the Alien Property Custodian.

outstanding certificates representing the vested shares and to issue new certificates to the Custodian (R. 16–17).

The debtor thereupon filed a petition in the bankruptcy proceeding for instructions whether to comply with this direction (R. 5–13). The petition for instructions, among other things, alleged on information and belief that certificates representing the vested shares were held by four named banks in Switzerland, herein referred to as the "Swiss banks," as collateral security for certain loans (R. 7) and requested instructions whether upon compliance with the Custodian's demand for the issuance to him of new certificates the debtor "would be protected from any and all claims by any parties, including said Swiss Banks" (R. 12). The district court, after hearing argument on the return to a show cause order issued on this petition (R. 3), held that the Trading With the Enemy Act "protects the debtor corporation and relieves it of doubt in the premises" and declined to consider whether the Swiss banks owned any interest in the vested shares (R. 49). It accordingly entered an order directing the debtor to cancel the outstanding certificates and to issue new certificates as directed by the Custodian (R. 50–51). Although the Swiss banks appeared by counsel in the district court in response to the order to show cause (R. 2, 50), they did not appeal from its decision (R. 64). The present

petitioners appealed, and the Circuit Court of Appeals, in an opinion by Judge Learned Hand, affirmed the District Court's order (R. 69).

SUMMARY OF ARGUMENT

This proceeding involves only the right of the Alien Property Custodian to immediate possession of property which he has vested pursuant to the Trading With the Enemy Act. In such proceedings it has been consistently held that, in the absence of special statutory rights, the Custodian's right to immediate possession may not be disputed. All questions as to his ultimate right to the property and as to the obligation, if any, of the United States to pay compensation for it may be litigated in other proceedings after the property has come into the Custodian's possession.

Petitioners urge that by reason of Section 8 (a) of the Act certain alleged pledgees, who were parties to the proceedings in district court but did not appeal, have rights to possession of the pledged property superior to the right of the Custodian. We think that such rights, if any, are personal to the pledgees and they may, as they evidently have done here, elect to abandon assertion of those rights at this time and resort to other remedies available under the Act. It follows that petitioners may not assert those rights on behalf of the pledgees.

Moreover, the record in this case does not reveal any basis for asserting rights under Section 8 (a).

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There is no allegation or proof that the alleged pledge was one which included the power to dispose of the property on "notice or presentation or demand"—the only type of pledge covered by Section 8 (a). Indeed, as the district court ruled, there is no evidence of any probative value that the property in question is pledged property.

In any event, petitioners will be subject to no liability to the alleged pledgees if they comply with the Custodian's demand. By failing to appeal from the judgment below, the alleged pledgees are barred from suit against the petitioners both on principles of estoppel and *res judicata*. In any event, the exculpatory provisions in Section 5 (b) (2) and 7 (e) afford complete protection to petitioners.

Petitioners are without standing in this proceeding to urge the constitutional objections to the statute which they advance and, in any event, these objections are without substance.

ARGUMENT

Reciting that he was acting "Under the authority of the Trading with the enemy Act, as amended, and pursuant to law", the Alien Property Custodian vested certain shares in the debtor corporation. He found that the shares were held by a Swiss corporation for the benefit of a German corporation, and that they were property of "a national of a designated enemy country (Germany)" (R. 14). Inasmuch as the order states that the shares were property of a "na-

tional" of Germany, the vesting was an appropriate exercise of the power conferred by Section 5 (b) of the Act to vest "any property or interest of any foreign country or national thereof".[2] In addition, the order was an equally appropriate exercise of the power conferred by Section 7 (c) of the Act to vest any property belonging to, or held for the benefit of, "an enemy or ally of enemy".[3]

Subsequently, the Custodian directed the debtor to cancel the outstanding certificates for the stock in question and issue new certificates to him (R. 16). This litigation arises out of the debtor's efforts to avoid complying with the Custodian's demand. The sole question is whether there is any legal justification for the debtor's refusal to comply with such a demand based upon a vesting order which is valid on its face.

Petitioners present to this Court no question as to the authority of the Custodian to make such a demand for certificates as an "incident" of a valid vesting order (*cf. Stoehr* v. *Wallace*, 255

[2] In Section 3 of Executive Order No. 8785, June 14, 1941, 6 F. R. 2897, Germany is designated as a "foreign country" for purposes of Section 5 (b). See also Section 10 of Executive Order No. 9193, July 6, 1942, 7 F. R. 5205.

[3] Section 2 (a) of the Act defines the term "enemy" as including "any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory."

U. S. 239, 246).[4] Nor do they raise any issue as to the validity and effect of the Vesting Order in so far as it affects either of the foreign corporations named in it (*cf.* Brief for Petitioners, pp. 2–3).[5] Petitioners' entire case is based upon asserted rights accruing under Section 8 (a) of the Act to the Swiss banks as alleged pledges of the stock in question. To prevail, petitioners must establish (1) that petitioners, who do not claim

[4] The holding of the Circuit Court of Appeals that that authority must be implied from the powers to vest and sell shares of stock (R. 68) is supported by the express grants in Section 5 (b) of the Act of authority to "perform any and all acts incident to the accomplishment or furtherance of" the purposes of the Section, and to "take other and further measures not inconsistent herewith for the enforcement of this subdivision"; by the further grant in subparagraph (B) of Section 5 (b) (1) of power to "direct and compel" any "transfer" and to "nullify" and "void" any holding of property in which a foreign national has an interest; and by the absence of any suggestion in the legislative history of the First War Powers Act, 1941, of any intention to deny to the Executive an authority which has been repeatedly exercised during World War I. In addition, Section 7 (c) of the Act expressly makes it the duty of a corporation, any shares of which have been vested by the Alien Property Custodian, to cancel the outstanding certificates for such shares and issue new certificates to the Custodian. *Great Northern Ry. Co.* v. *Sutherland*, 273 U. S. 182; *Columbia Brewing Co.* v. *Miller*, 281 Fed. 289 (C. C. A. 5); *Miller* v. *Kaliwerke Aschersleben Aktien-Gesellschaft*, 283 Fed. 746 (C. C. A. 2); *Garvan* v. *Marconi Wireless Telegraph Co. of America*, 275 Fed. 486 (D. N. J.); *Hicks* v. *Baltimore & Ohio R. Co.*, 10 F. 2d 606 (D. Md.). We have found no contrary decision on the question.

[5] Plainly, any such attack on the Vesting Order would be without substance; see *infra*, pp. 25–26.

that the asserted rights accrued to them, have standing in the courts to seek an adjudication of those rights, and (2) that upon the record in this case there is a sufficient showing to justify holding that any rights found to exist under Section 8 (a) have been violated. For the reasons set forth below we think petitioners fail in every respect to sustain the burden.

I

PETITIONERS MUST YIELD TO THE CUSTODIAN'S DEMAND FOR THE PROPERTY UNLESS THE STATUTE SPECIFICALLY AUTHORIZES THEM TO REFUSE

Since the decision of this court in *Central Union Trust Co.* v. *Garvan,* 254 U. S. 554, it has been settled that the Custodian may, pursuant to the Trading with the Enemy Act, forcibly seize property under Section 7 (c), and that a resort to the courts in aid of his seizure was to be no "less immediately effective than a taking with the strong hand" (*id.,* 568). See *Stoehr* v. *Wallace,* 255 U. S. 239; *Commercial Trust Co.* v. *Miller,* 262 U. S. 51. As this Court said in *Central Union Trust Co.* v. *Garvan, supra,* 567, "obedience to the statute requires an immediate transfer in any case within its terms without awaiting a resort to the Courts." Section 9 (a) of the Act affords a judicial trial *de novo* of the question whether the property was within the granted seizure power and that section has been held to afford the only procedure in which any issues as to the Custo-

dian's ultimate right to the property may be litigated. See as to suits by the Custodian to compel the conveyance of property demanded by him, *Central Union Trust Co.* v. *Garvan, supra; Commercial Trust Co.* v. *Miller, supra;* as to suits to enjoin compliance with the Custodian's demand, *Salamandra Ins. Co.* v. *New York Life Ins. & Trust Co.*, 254 Fed. 852 (S. D. N. Y.); as to proceedings by way of a bill of interpleader or bill of accounting, *American Exchange National Bank* v. *Garvan*, 273 Fed. 43 (C. C. A. 2); *Kahn* v. *Garvan*, 263 Fed. 909 (S. D. N. Y.).

Section 5 (b), as amended, plainly calls for an initial transfer to the Custodian no less peremptory in character. Its provision that property "shall vest, when, as, and upon the terms directed by the President" contemplates a transfer of title by executive declaration,* and there is nothing to suggest that the Custodian's demand for possession of property so vested was intended to be less immediate and compelling in this war than in the last. In cases involving property vested pursuant

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* The terminology of vesting was used during World War I to describe the passage of title under Section 7 (c). Thus Section 2 (c) of Executive Order No. 2813, February 26, 1918, provided in part that "When demand shall be made and notice thereof given * * * such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the money or other property demanded * * *".

to Section 5 (b) the courts have consistently held that the issuance of a vesting order vests title in the Custodian (*United States* v. *The Antoinetta*, 153 F. 2d 138, 143 (C. C. A. 3), certiorari denied, 328 U. S. 863; *Sarazin* v. *Wright Aeronautical Corp.*, 54 F. Supp. 244, 252 (S. D. N. Y.)) and with without delay and without dispute as to his ultimate right to retain the property (*Application of Alien Property Custodian*, 60 N. Y. S. 2d 897 (App. Div., 4th Dept.); *Stern* v. *Newton*, 180 Misc. 241, 39 N. Y. S. 2d 593 (Sup. Ct. N. Y.); *In re Yokohama Specie Bank*, 66 N. Y. S. 2d 289 (Sup. Ct.)). As we point out in our brief in No. 934, *Clark* v. *Uebersee Finanz-Korporation, A. G.*, pp. 33-63, a transfer accomplished thus summarily does not determine the ultimate rights of the owners; those rights are secured by the provision for the return of property which is judicially found not to be within the range of the Custodian's vesting authority and by the availability of the right to sue for just compensation if the property is within the range of that authority but the owner is entitled to the protection of the Fifth Amendment. Whether the vesting order here involved be regarded as an exercise of authority conferred by Section 5 (b) or Section 7 (c), or both, petitioners cannot prevail unless they can establish that they are by statute entitled to special consideration.

II

REGARDLESS OF WHAT RIGHTS A PLEDGEE MAY HAVE, PETITIONERS HAVE NO STANDING TO RESIST THE CUSTODIAN'S DEMAND

A. ASSUMING THAT SECTION 8 (a) GIVES THE ALLEGED PLEDGEES RIGHTS WHICH MAY BE ASSERTED HERE, THOSE RIGHTS ARE PERSONAL AND MAY NOT BE ASSERTED BY PETITIONERS

Petitioners assert that Section 8 (a) creates an exception to the statutory scheme just summarized by permitting one who asserts that he is a pledgee of property vested by the Custodian to secure at the outset a judicial determination of the existence of the asserted pledge. We think it unnecessary to consider whether Section 8 (a) has that effect in the case of a pledgee who is not a national of a foreign country. We think the court below rightly held (R. 67–68) that in view of the amendments made to Section 5 (b), as amended by the First War Powers Act of 1941, c. 593, Sec. 301, 55 Stat. 839, 5 U. S. C. App., Supp. V, 5 (b), nationals of a foreign country, which the alleged pledgees in this case concededly are, cannot assert whatever rights are conferred by Section 8 (a). As we point out in our brief in No. 934, *Clark* v. *Uebersee Finanz-Korporation, A. G.*, pp. 9–33, Section 5 (b) now authorizes the Custodian to vest, retain and use any interest of any foreign national in any property. Since Section 5 (b) is the later enactment, Section 8 (a) was properly construed by the court below as no longer interposing any

barrier to seizure and retention of possession by the Custodian of pledged property in the hands of a foreign national. If the court below was correct in so ruling, and we submit that it was, the entire foundation upon which the petitioners' argument rests is destroyed.

But even on the assumption that the Swiss banks, if they were before this Court, might be heard to resist the Custodian's demand for the issuance of new certificates, we submit that these petitioners have no standing to do so. Section 8 (a) is cast in terms of a personal privilege conferred upon a pledgee to hold possession of the pledged property until the pledge is satisfied. Only the pledgee is entitled by its terms to "continue to hold" the property, and the grant of the privilege thus to hold presupposes that the holder "may dispose of the property" in satisfaction of the pledge and will account to the Custodian for any surplus received. Plainly the Section confers no privilege which may be asserted by one who is not a pledgee and has no power of disposition over the pledged property.

The privilege conferred by Section 8 (a) is not being claimed here by the pledgees. While the Swiss banks, the asserted pledgees, appeared by counsel in the district court (R. 2, 50) and asked that the issuance of certificates to the Custodian be deferred until they could have opportunity to prove the existence of their asserted pledge (R.

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23), they did not join in the appeal to the Circuit Court and are not before this Court.' Petitioners assert no interest in the stock by way of pledge or otherwise. Nor do they purport in any way to represent the Swiss banks. Rather, their position in the district court was antagonistic to that of the Swiss banks. The debtor there requested instructions whether upon compliance with the Custodian's demands "the Debtor would be protected from any and all claims by any parties, including said Swiss Banks" (R. 12), and the accompanying affidavit refers to a letter from counsel for those banks which threatened to hold the debtor liable for any damage suffered by them as a result of the debtor's compliance with the order (R. 31–33).[2]

[1] As alleged holders of a beneficial interest in the stock, they were persons entitled to be heard within Section 206 of the Bankruptcy Act, 52 Stat. 894, 11 U. S. C. 606, and hence they would appear to have had standing to appeal if they presented any issue of which the courts would have cognizance. Cf. *Young* v. *Higbee Co.*, 324 U. S. 204, 210; *Dana* v. *Securities & Exchange Commission*, 125 F. 2d 542 (C. C. A. 2).

[2] To the extent that the judgment of the District Court was simply one granting instructions, there may be some question whether it could properly be appealed from by the petitioners, for the debtor had been granted the relief requested—the issuance of instructions which would remove its doubts—and it presumably had no legitimate interest in the nature of those instructions. The proceedings in the Circuit Court of Appeals and in this Court would to that extent appear to be nonadversary in character. *Cf. Burco, Inc.* v. *Whitworth*, 81 F. 2d 721, 728 (C. C. A. 4), certiorari denied, 297 U. S. 724. We have assumed, however, that because the order of the District Court directed

Furthermore, petitioners are seeking to assert alleged rights on behalf of the Swiss banks which the banks have evidently chosen to abandon. The fact that the banks chose not to appeal in this proceeding is a plain indication that they were willing to allow the Custodian to take possession of the stock and rely upon other means for protecting their interests. Certainly such an election does not deprive them of adequate remedies. Under Section 32 of the Act they may seek the return of the stock in an administrative proceeding. In addition, as we point out in our brief in *Clark* v. *Uebersee Finanz-Korporation*, No. 934, this Term, pp. 33–63, judicial remedies are fully available in which they can litigate any questions as to the Custodian's ultimate right to retain the property and can secure full protection of any constitutional rights.[9]

We submit that petitioners have no standing to assert alleged rights in which they have no interest, which could accrue only to parties not

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certain action by the debtor—the issuance of new stock certificates—it had standing to appeal from that order. *In re Barnett*, 124 F. 2d 1005, 1008 (C. C. A. 2); see *id.* 1013 (dissenting opinion); *Fishgold* v. *Sullivan Drydock Corp.*, 328 U. S. 275. The issues presented by the debtor's appeal are the same as those which could have been presented upon an application by the Custodian to enforce his demand for new certificates, see cases cited *infra*, p. 20.

[9] Cf. *Mayer* v. *Garvan*, 278 Fed. 27 (C. C. A. 1), *Standard Oil Co.* v. *Markham*, 64 F. Supp. 656, 665, 671 (S. D. N. Y.); *Kind* v. *Clark* (C. C. A. 2), decided April 9, 1947, not yet reported.

before this Court, and which the real parties in interest have elected to abandon.

B. NEITHER THE PLEADINGS NOR THE EVIDENCE IN THIS CASE ESTABLISH THAT ANYONE IS ENTITLED TO CLAIM THE RIGHTS WHICH PETITIONERS ENDEAVOR TO ASSERT

The sole issue which petitioners attempt to present to this Court is whether the Swiss banks have certain rights stemming from Section 8 (a) of the Act. That Section is applicable solely to persons holding property, under a "mortgage, pledge, or lien, or right," which "may be disposed of on notice or presentation or demand." In order to assert rights under Section 8 (a) it is essential to establish that the pledge is one which permits the pledged property to be "disposed of on notice or presentation or demand." *Garvan* v. *$50,000 Bonds,* unreported (S. D. N. Y.),[10] affirmed, 265 Fed. 477 (C. C. A. 2), affirmed *sub nom. Central Union Trust Co.* v. *Garvan,* 254 U. S. 554. Neither in the petition for the order to show cause, nor in what may be considered the return to the order filed on behalf of the Swiss banks, nor in any other pleading, is there any suggestion that the alleged pledge here involved is such that the pledged property "may be disposed of on notice or presentation or demand." Likewise, the record is barren of any evidence to that effect.

[10] The opinion may be found in the record in No. 394, October Term 1920, at pages 79–84.

Moreover, there is no evidence in the record to establish the existence of any pledge. There are four affidavits in the record which aver that certain unidentified shares of the debtor's stock were at various times pledged to the Swiss Banks as security for loans, but there is nothing to show that the asserted pledges are still in existence or to indicate who has possession or right to possession of the shares (R. 44–48). The district court rightly regarded the affidavits as being of no probative value (R. 49). It is true that the Swiss banks, after having delayed the Custodian's acquisition of possession for more than two years while they allegedly endeavored to collect evidence,[11] sought more time for that purpose (R. 17–23). The record discloses no objection to the court's action in refusing to grant the request and in proceeding with the hearing. The Swiss banks participated in the hearing (R. 50) and neither assigned error to the judgment nor appealed therefrom. In the circumstances, the record can hardly be said to afford a basis for the contentions which petitioners advance.

Petitioners argue (Brief for Petitioners, pp. 64–66) that it was error for the district court not to postpone decision in order to give the Swiss

[11] The Vesting Order was issued November 17, 1942 (R. 14). The order to show cause was dated April 5, 1943 (R. 4). The order here appealed from was dated October 30, 1945 (R. 51).

banks an opportunity to prove the existence of their pledges. That question was not presented by the petition for writ of certiorari (see Petition, pp. 5–13) and has never been specified as error (see Petition, pp. 16–19; Brief for Petitioners, pp. 7–9). For that reason alone the contention cannot be considered here. Rule 38, par. 2; Rule 27, par. 6; *General Pictures Corp.* v. *Western Electric Co.*, 304 U. S. 175, 179; *National Licorice Co.* v. *Labor Board*, 309 U. S. 350, 357; *Flournoy* v. *Wiener*, 321 U. S. 253, 259. Moreover, it is a contention which these petitioners plainly could not assert, for there is no suggestion in the record that they ever requested an opportunity to prove the existence of the pledge—a matter in which they presumably had no interest.

C. PETITIONERS' FEARS THAT THE DEBTOR MAY BE HELD LIABLE TO THE SWISS BANKS FOR OBEYING THE DIRECTIONS OF THE CUSTODIAN ARE GROUNDLESS

Petitioners assert (Brief for Petitioners, pp. 57–64) that they may be subjected to liability to the Swiss banks should they comply with the Custodian's demand for the issuance of new certificates. We think their fears are groundless.

In the first place, the petitioners, in complying with the Custodian's demand, will be acting under the instruction of a court of competent jurisdiction. Cf. *City Bank Farmers Trust Co.* v. *Smith*, 263 N. Y. 292, 295–6, 189 N. E. 222, 223–4. It

is unnecessary to consider how far that instruction would protect them from liability to one who had no opportunity to object to the giving of the instruction for here the Swiss banks were represented by counsel in the district court. As pointed out above, they did not file objection or assign error to the judgment of the district court and did not attempt to appeal. Any effort on their part to hold the debtor liable for compliance with the district court's order, from which they made no attempt to appeal, would appear to be barred by principles of both estoppel and *res judicata*. Cf. *United States* v. *Guaranty Trust Co. of New York*, 76 F. 2d 747 (C. C. A. 2).

Moreover, in seeking instructions from the District Court, petitioners displayed an excess of caution. The Trading With the Enemy Act itself specifically forecloses any possibility that they might be held liable to the Swiss banks or to any other owner of an interest in the shares as a result of their compliance with the Custodian's demand. Section 5 (b) (2) of that Act provides that "any payment, conveyance, transfer, assignment, or delivery" to the Custodian of any property or interest "shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same," and that "no person shall be held liable in any court for or in respect to anything done or omitted in good faith" in pursuance of any order, rule, or

regulation issued pursuant to the Act.[12] Like the similar provisions of Section 7 (e) of the Act, these provisions were intended to provide "in the most explicit way for the complete protection in every court of the bailee, trustee, agent, obligor, or other person called upon to yield to the Alien Property Custodian's symbolic act of capture." *Kahn* v. *Garvan*, 263 Fed. 909, 914 (S. D. N. Y.). See also *Farmers' Loan & Trust Co.* v. *Hicks*, 9 F. 2d 848, 851 (C. C. A. 2); *Wageck* v. *Travelers Insurance Co.*, 108 Misc. 65, 177 N. Y. S. 327 (Sup. Ct.). They plainly relieve a corporation from any possibility that it might be held liable to the holder of outstanding stock certificates by reason of the issuance to the Custodian of new certificates representing shares vested by him. *Great Northern Ry. Co.* v. *Sutherland*, 273 U. S. 182; *Columbia Brewing Co.* v. *Miller*, 281 Fed. 289 (C. C. A. 5); *Miller* v. *Kaliwerke Aschersleben Aktien-Gesellschaft*, 283 Fed. 746 (C. C. A. 2); *In re Sutherland*, 23 F. 2d 595, 598 (C. C. A. 2); *Garvan* v. *Marconi Wireless Telegraph Co.*, 275 Fed. 486 (D. N. J.); *Hicks* v. *Baltimore & O. R. Co.*, 19 F. 2d 606 (D. Md.).

[12] These exculpatory provisions of Section 5 (b) (2) are plainly not open to attack as creating a conclusive presumption or as invading the judicial function, as the petitioners suggest (Brief for Petitioners, pp. 61–63). They do not foreclose judicial inquiry into any issue; they merely restrict that inquiry to an appropriate proceeding under Section 9 (a) or the Tucker Act.

In reality petitioners are attempting, by the assertion of fears which Sections 5 (b) (2) and 7 (e) were intended to dispel, to secure at the outset an adjudication of the respective rights of the Custodian and the Swiss banks in the shares. This attempt deserves to meet with no more success than did the similar attempt in *American Exchange National Bank* v. *Garvan*, 273 Fed. 43 (C. C. A. 2). There the Custodian had demanded that the bank pay over to him a deposit which he determined to be owing to an enemy. The bank, asserting that the depositor threatened to hold it liable should it comply with the Custodian's demand, sought by bill of interpleader to secure a determination of the ultimate rights of the depositor and the Custodian. The Circuit Court of Appeals for the Second Circuit directed that the bill be dismissed, holding that the Custodian's right to immediate possession could not thus be delayed and that the bank was fully protected by the provisions of Section 7 (e).

Petitioners suggest, however, that if the grant of authority to vest the property of foreign nationals conferred by Section 5 (b) (1) is unconstitutional, the exculpatory clause of Section 5 (b) (2) will afford them no protection (Brief for Petitioners, pp. 63–4). In Part III of this brief, we shall point out the insubstantiality of the constitutional objections to Section 5 (b) which they suggest. But it is now well established that the

presentation of constitutional issues, like other issues, can validly be restricted to an exclusive procedure. *Tyler* v. *Judges of Court of Registration*, 179 U. S. 405; *Adams* v. *Milwaukee*, 228 U. S. 572; *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41; *Yakus* v. *United States*, 321 U. S. 414, 434, and cases cited. We think that is what has been done in the Trading With the Enemy Act. Nothing in the decisions which hold that property demanded by the Custodian must be immediately transferred to him without awaiting the delays of litigation suggests any exception for cases where constitutional objection to the validity of the seizure were raised.[13] Indeed the existence of such an exception is expressly denied by *Commercial Trust Co.* v. *Miller*, *supra*. There a trustee of property held for the joint account of a neutral and an enemy declined to comply with the Custodian's demand that the entire trust res be conveyed to the Custodian. In defense to a suit by the Custodian under Section 17 of the Act to compel the transfer of the trust *res* to him, the

[13] The procedure under the Trading With the Enemy Act for a summary taking followed by subsequent adjudication of its validity has often been analogized to the power to collect taxes by distraint (*Phillips* v. *Commissioner*, 283 U. S. 589, 597; *Yakus* v. *United States*, 321 U. S. 414, 442; *Salamandra Ins. Co.* v. *New York Life Ins. & Trust Co.*, 254 Fed. 852, 860–61 (S. D. N. Y.)), a power whose exercise cannot be restrained by attack on the constitutionality of the tax (*Snyder* v. *Marks*, 109 U. S. 189; *Dodge* v. *Osborn*, 240 U. S. 118).

trustee contended, among other things, that the Act was unconstitutional as to the neutral as a taking of property without due process of law and that the exculpatory provisions of Section 7 (e) would afford no defense to the trustee should it comply with the Custodian's demand. The court refused to consider this contention, pointing out that "the suit was tantamount to physical seizure" (p. 55), and stating that "It is manifest, therefore, that the defenses upon which the contentions are based were not available to either claimant of the property" (p. 56). See also *United States Trust Co.* v. *Miller*, 262 U. S. 58; *Ahrenfeldt* v. *Miller*, 262 U. S. 60.

It does not follow that the Swiss Banks are left without a remedy. As we pointed out *supra*, p. 15, they are entitled to be heard in an administrative proceeding before the Custodian and may also bring suit in the courts against the United States for compensation (see Government's Brief in No. 934, *Clark* v. *Uebersee Finanze-Korporation, A. G.*). Moreover if Section 5 (b) should be held unconstitutional, Section 9 (a) would clearly afford full relief from a constitutionally unauthorized vesting, for the bar which we believe Section 5 (b) now interposes to recovery by a foreign national under Section 9 (a) would be removed. Those remedies would be fully adequate to protect all constitutional rights of former owners of vested property. Cf. *Central Union Trust Co.* v. *Garvan*,

254 U. S. 554; *Stoehr* v. *Wallace*, 255 U. S. 239; *Commercial Trust Co.* v. *Miller*, 262 U. S. 51; *Becker Steel Co.* v. *Cummings*, 296 U. S. 74. Since any owner of an interest in the vested shares would thus have a fully adequate remedy to redress a constitutionally unauthorized seizure without the necessity of suit against the debtor, there is plainly no basis for denying effect to the exculpatory clause of Section 5 (b), or for permitting the immediate reduction to possession of the vested shares to be delayed by litigation as to constitutional issues which can be fully presented in a subsequent proceeding.

III

THE PETITIONERS' OBJECTIONS TO THE CONSTITUTIONALITY OF SECTION 5 (b) ARE WITHOUT SUBSTANCE

In their brief, petitioners argue at length the proposition that Section 5 (b) of the Trading With the Enemy Act must be read as conferring the power to vest and retain only the property of enemies and not the property of nationals of a foreign country (Brief for Petitioners, pp. 17–54). This construction of Section 5 (b) they seek to support by reference to the legislative history of that Act and subsequent bills and by argument that if construed otherwise Section 5 (b) would be unconstitutional.

We think there are a number of reasons why this argument need not be considered by this Court. The argument is apparently addressed

only to the question whether, as a result of the amendment of Section 5 (b) in 1941, a foreign national may now claim any rights under Section 8 (a) to resist the transfer to the Custodian of property vested by him. As we have shown in Part IIA, *supra*, petitioners have no conceivable interest in that question. If the argument is addressed also to the validity of the Vesting Order in so far as it is based upon the power to vest the property of any foreign national, petitioners are in no better position for, as we have pointed out in Part IIC, *supra*, such questions as to the scope and validity of the vesting power can be considered only in a proceeding under Section 9 (a) and not in resistance to the Custodian's summary demand for possession. The possibility of liability to the Swiss Banks or other claimants of the stock, which alone gives the petitioners any interest in the questions sought to be raised, is expressly foreclosed by Sections 5 (b) (2) and 7 (e). Moreover, even on petitioners' theory that Section 5 (b) (1) should be judicially rewritten to substitute the words "enemy or ally of enemy foreign country" for the words "foreign country" in the grant of the vesting power and that the purpose of Congress was merely "to revive the 1917 statute" (Brief for Petitioners, pp. 27–32), the Custodian's Vesting Order could not be attacked, for, as we have pointed out above, p. 7, *supra*, that Order goes no further than he could have

gone under the Act as it stood during World War I.

In any event, the petitioners' contentions are without substance. The legislative materials on which they rely (Brief for Petitioners, pp. 22–39) are fully discussed in our brief in No. 934, *Clark* v. *Uebersee Finanz-Korporation, A. G.*, pp. 18–28, 48–54, as are their suggestions (Brief for Petitioners, pp. 39–40, 42–43) with respect to repeals by implications of other provisions of the Trading With the Enemy Act, and of the Treaty of 1850 with Switzerland (Brief for the Custodian in No. 934, *Clark* v. *Uebersee Finanz-Korporation, A. G.*, pp. 33–39, 63–68.)[14] The petitioners' suggestion (Brief for Petitioners, pp. 44–48) that the Act, if construed to deny to foreign nationals the right of recovery under

[14] Petitioners refer also to Article 2 of the Convention for the Protection of Industrial Property of June 2, 1934, 53 Stat. 1768, 1772. Since the "protection of industrial property" to which the convention relates is defined in Article 1 (2) of the convention as including "patents, utility models, industrial designs and models, trade marks, commercial names and indications of origin, or appellations of origin, as well as the repression of unfair competition," it is difficult to see what relevance the Convention can have to the power of the Custodian to vest and retain shares of stock. In any event, the guarantee in Article 2 (1) of the "same legal remedy against any infringement of their rights," read in context, plainly refers to the rights to sue for patent and trade mark infringement and the like, and does not preclude the exercise of the ordinary right of the United States to take property, upon payment of just compensation. See also the reservations of Article 2 (3) of the Convention.

Section 9 (a), would leave non-enemy foreign nationals without remedy has also been fully discussed in our brief in No. 934, *Clark* v. *Uebersee Finanz-Korporation, A. G.*, pp. 54–63. We there point out that any and all constitutional rights of such a non-enemy foreign national are fully protected by the availability of a suit for just compensation under the Tucker Act.[15]

[15] The petitioners suggest two obstacles to the availability of such a suit which were not discussed in our Brief in the *Uebersee* case. One is the provision of Section 153 of the Judicial Code, 28 U. S. C. 259, that the jurisdiction of the Court of Claims "shall not extend to any claim * * * growing out of or dependent on any treaty stipulation entered into with foreign nations * * *." To the extent that any suit of the Swiss banks for just compensation is founded upon a claim of constitutional right to compensation or upon an implied promise to pay such compensation as the Constitution might require, it plainly would not be a claim growing out of or dependent on a treaty stipulation. Indeed, the Swiss banks, being corporations, could not in any event assert any rights under the Treaty of 1850 with Switzerland to which the petitioners refer. See Brief for the Custodian in No. 934, *Clark* v. *Uebersee Finanz-Korporation, A. G.*, pp. 63–68.

The petitioners also refer to the provision of Section 155 of the Judicial Code, 28 U. S. C. 261, that aliens may sue in the Court of Claims only if they are citizens or subjects of a government which accords to citizens of the United States the right to prosecute claims against it. Whatever application that provision might have in other contexts, *cf. Russian Volunteer Fleet* v. *United States*, 282 U. S. 481, it could not operate to bar any claim of the Swiss banks, for the Court of Claims has twice held that Switzerland satisfied the requirements of that Section and that a Swiss may accordingly bring suit in the Court of Claims. *Lobsiger* v. *United States*, 5 C. Cls. 687; *Hartmann* v. *United States*, 86 C. Cls. 579; see Richardson, *History, Jurisdiction, and Practice of the Court of Claims*, 17 C. Cls. 17.

The petitioners further suggest (Brief for Petitioners, pp. 49–50) that Section 5 (b) is unconstitutional because it fails to require an investigation and formal findings prior to the issuance of a vesting order.[16] Since the Vesting Order in suit (R. 14–15) contains explicit findings which are recited to have been made "after investigation," it cannot be asserted that the omission of the Act to require such investigations and findings was prejudicial in this case. But in any event, the omission of those requirements cannot violate any constitutional right, for any claimant to the property may secure, in a suit under Section 9 (a), a judicial trial *de novo* "unembarrassed by the precedent executive determination" (*Stoehr* v. *Wallace*, 255 U. S. 239, 246; *Commercial Trust Co.* v. *Miller*, 262 U. S. 51, 53) of all questions relating to the Custodian's authority to vest and retain the property. Plainly the right to such a trial satisfies the most stringent requirements of procedural due process.

The petitioners suggest also (Brief for Petitioners, pp. 50–54) that Title III of the First War Powers Act makes an improper delegation of legislative authority to the Executive.[17] This conten-

[16] *Hunter* v. *Central Union Trust Co.*, 17 F. 2d 174 (S. D. N. Y.), referred to by the petitioners in this connection, holds no more than that a demand, which fails to identify the specific property demanded is ineffective.

[17] As the court below properly pointed out, no objection can be made on the ground of indefiniteness (*cf. United*

tion is also without substance. In Section 5 (b) Congress has stated explicitly both the powers conferred and the subject matter—property of a foreign country or a national thereof [18]—to which they may be applied, and has limited the occasion of their exercise to "time of war or during any other period of national emergency." [19] Moreover, the Executive was not left without guidance as to the policies which were to govern the exercise of the vesting power within the areas thus delimited. Those policies were suggested by the direction that vested property be held and used, etc., "in the interest of and for the benefit of the United States," by the evident purposes of the Act as disclosed by its

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States v. *Cohen Grocery Co.*, 255 U. S. 81), for, as the court said, "all seizures are made by orders *ad hoc*, and the duties imposed are clear and explicit" (R. 66).

[18] These terms are defined in detail by the applicable executive orders. (See Section 5 of Executive Order No. 8389, April 10, 1940, 5 F. R. 1400, as amended by Executive Order No. 8785, June 14, 1941, 6 F. R. 2897, made applicable to the exercise by the Custodian of the vesting power by Section 10 of Executive Order No. 9193, July 6, 1942, 7 F. R. 5205.) The definitions in their original form were expressly ratified by the Joint Resolution of May 7, 1940, 54 Stat. 179. The amended definitions presently in effect were in force when the First War Powers Act was passed. Moreover, the President's power to prescribe definitions is limited by the requirement of Section 5 (b) (3) that the definitions be "not inconsistent with the purposes of this subdivision."

[19] Since the vesting power has thus far been exercised only during time of war, it is unnecessary to consider the questions that might be presented by an exercise of that power at a time when the United States was not at war.

text and by the reports of the committees of Congress (see Brief for the Custodian in No. 934, *Clark* v. *Uebersee Finanz-Korporation, A. G.*, pp. 9–21), and by the historical background of both the seizure of enemy property during World War I and the freezing of foreign property preceding our entry into World War II in which the new powers were placed.

Viewing the circumstances realistically (*cf. Bowles* v. *Willingham*, 321 U. S. 503, 515), Congress could not have been expected to impose standards of greater precision. In the delicate and constantly shifting field of foreign relations, Congress could not undertake the responsibility of designating the foreign countries with respect to the property of whose nationals each of the various powers granted by Section 5 (b) should be exercised, nor of revising that designation with the promptness that occasion might demand. Nor could it practicably attempt either to lay down a binding definition of "national" which could be expected with assurance to pierce all the myriad cloaking devices whose discovery could be anticipated, or to prescribe in an informed manner fixed categories of property to which the vesting and freezing powers, respectively, were to be applied. And even if it could have done so, it was not required to do so. This Court has pointed out that it is for Congress to choose between rigidity and flexibility in the administration of its

laws. *Yakus* v. *United States*, 321 U. S. 414, 425–6. Here the reports of the committees of Congress have emphasized the importance which Congress attached to the avoidance of "rigidity and inflexibility" by the grant of "flexible powers * * * to deal with the problems that surround alien property or its ownership or control in the manner deemed most effective in each particular case." H. Rep. No. 1507, 77th Cong., 1st Sess., p. 3; see S. Rep. No. 911, 77th Cong., 1st Sess., p. 2. This Court cannot be asked to substitute its judgment for that of Congress as to the wisdom of this choice.

Tested by established principles, Section 5 (b) plainly does not involve any abdication by Congress of its legislative functions. In dealing with the field of foreign relations in time of war, Congress was not required to state with rigid precision the policies which were to govern the exercise of the powers conferred. *Cf. United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304. It is enough that it has specified the powers, defined the class of property with respect to which they are to be operative, and limited the time during which they may be exercised. *Cf. Bowles* v. *Willingham, supra*, 515. The Trading With the Enemy Act as it existed during the First World War contained no statement of the policies which were to govern the exercise of the power to seize enemy property, yet in the many cases in this

Court sustaining its validity it was never suggested that it involved an improper delegation of legislative power. The regulatory powers of Section 5 (b) to which the vesting power was added in identical terms by Title III of the First War Powers Act have likewise been repeatedly sustained against the charge of an improper delegation of legislative authority. See as to Section 5 (b) as amended by the Act of March 9, 1933, 48 Stat. 1, *Campbell* v. *Chase National Bank,* 5 F. Supp. 156, 172–4 (S. D. N. Y.), affirmed, 71 F. 2d 669 (C. C. A. 2), certiorari denied, 293 U. S. 592; as further amended by the Joint Resolution of May 7, 1940 (54 Stat. 179), *United States* v. *Von Clemm,* 136 F. 2d 968 (C. C. A. 2), certiorari denied, 320 U. S. 769; and as further amended by the First War Powers Act, 1941, *Alexewicz* v. *General Aniline and Film Corp.,* 181 Misc. 181, 193, 43 N. Y. S. 2d 713, 726 (Sup. Ct.); see *Hartmann* v. *Federal Reserve Bank of Philadelphia,* 55 F. Supp. 801, 804 (E. D. Pa.). And, viewing Section 5 (b) as authorizing exercise of the power of eminent domain to the extent that it permits the taking of foreign property upon payment of such compensation as the Constitution may require, it has never been the custom of Congress to define with rigidity the occasions for the exercise of the power of eminent domain. *Cf., e. g.,* Act of August 18, 1890, 26 Stat. 316, as amended, 50 U. S. C. 171; Act of May 25, 1926, 44 Stat. 630,

40 U. S. C. 341; Act of March 1, 1929, 45 Stat. 1415, as amended, 40 U. S. C. 361.

CONCLUSION

For the foregoing reasons, the judgment of the Circuit Court of Appeals for the Second Circuit be affirmed.

Respectfully submitted.

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APPENDIX

Trading With the Enemy Act, c. 106, 40 Stat. 411, as amended (50 U. S. C. App. 1–31):

* * * * * *

SEC. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

* * * * *

Sec. 5. [as amended by the First War Powers Act of 1941, c. 593, Sec. 301, 55 Stat. 839, 50 U. S. C. App., Supp. V, 5 (b)]:

* * * * * *

(b) (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered,

liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; * * * and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

* * * * * *

SEC. 7 [as amended by the Deficiency Appropriation Act of Nov. 4, 1918, c. 201, Sec. 1, 40 Stat. 1020]:

* * * * * *

(c) If the President shall so require any money or other property * * * owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy * * * which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, as-

signed, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

* * * * * *

The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States.

(e) No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

Any payment, conveyance, transfer, assignment, or delivery of money or property made to the Alien Property Custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. * * *

SEC. 8 (a) That any person not an enemy or ally of enemy holding a lawful mortgage, pledge, or lien, or other right in the nature of security in property of an enemy or ally of enemy which, by law or by the terms of the instrument creating such mortgage, pledge, or lien, or right, may be disposed of on notice or presentation or

demand, and any person not an enemy or ally of enemy who is a party to any lawful contract with an enemy or ally of enemy, the terms of which provide for a termination thereof upon notice or for acceleration of maturity on presentation or demand, may continue to hold said property, and, after default, may dispose of the property in accordance with law or may terminate or mature such contract by notice or presentation or demand served or made on the alien property custodian in accordance with the law and the terms of such instrument or contract and under such rules and regulations as the President shall prescribe; and such notice and such presentation and demand shall have, in all respects, the same force and effect as if duly served or made upon the enemy or ally of enemy personally: *Provided*, That no such rule or regulation shall require that notice or presentation or demand shall be served or made in any case in which, by law or by the terms of said instrument or contract, no notice, presentation, or demand was, prior to the passage of this Act, required; and that in case where, by law or by the terms of such instrument or contract, notice is required, no longer period of notice shall be required: *Provided further*, That if, on any such disposition of property, a surplus shall remain after the satisfaction of the mortgage, pledge, lien, or other right in the nature of security, notice of that fact shall be given to the President pursuant to such rules and regulations as he may prescribe, and such surplus shall be held subject to his further order.

* * * * *

SEC. 9 [as amended]:

(a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity

in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

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